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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,905	10/29/2003	Jean-Louis H. Gueret	05725.1251-00	4525

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

DEVORE, PETER T

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,905

Applicant(s)

GUERET

Examiner

Peter T. deVore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 26-30 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 31, 32 and 34-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/29/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 26-30 and 33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/2/05.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 17, 18, 21, 22, 24, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Walters.

The Walters reference discloses a dispenser 410 comprising a receptacle 412, and a body comprising a binder (absorbent material 460), a plurality of particles (flexible education tube material 424), and a cavity (formed by the opening at the free end of the tube 430). Note that when the absorbent material 460 is extruded with the tube material 424 as described in col. 12, lines 6-14, it is reasonable to construe the absorbent material 460 as the binder and the tube material 424 as the particles given the cross sectional area of the two respective layers shown in the alternative embodiment of Figures 21 and 23 which shows more absorbent material than tube material. Also, in

the extruded-together configuration, the uniform mixture discussed in col. 12, lines 6-14 ensures that both the body and some of the particles will inherently touch the product within the dispenser. Regarding claims 6, 17, and 18, the absorbent material may be a polyacrylate (see col. 11, lines 62-66). Regarding claims 21 and 34, the dispensed product is a liquid (see abstract). Regarding claim 22, the tube is annular. Regarding claim 2, polyacrylate is inherently organic. Regarding claim 24, the hollow middle of the tube is construed as a through hole.

Claims 1, 9, 12-14, 16, 20, 21, 31, 32, 34, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. P.G.Pub. 2001/0033766 (Gueret).

The Gueret reference discloses a dispenser 1 comprising a receptacle 4, a body 13 comprising a binder of polyether (para. 108) or ceramic (para. 113) with cavities (the open cells discussed in para. 32) and a plurality of particles (ferrite particles discussed in paragraph 40), and in such configuration, the uniform distribution of particles discussed in para. 70 ensures that some of the particles will touch product once the product is applied to the body. Regarding claims 12-14, see weight percent of particles described in para. 40. Regarding claim 20, see circulation promotion described in para. 10. Regarding claims 21, 34, and 36, the product is a liquid (see para. 63) cosmetic (see para. 1). Regarding claims 31 and 32, see the size of the body described in para. 33. Regarding claim 37, the Gueret dispenser optionally includes magnet 16.

Claims 1, 9, 19, 20, 21, 23-25, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Console.

The Console reference discloses a dispenser comprising a receptacle (14 and 11) and a body comprising a ceramic binder 21 (see col. 2, lines 44-48) with a plurality of silver particles which are released as ions when water passes through the body (see col. 4, lines 29-50) and a cavity (see concave portion of body in Figure 3). Regarding claim 20, the silver ions are bactericidal (see col. 4, lines 38-44). Regarding claims 21 and 34, the dispensed product is a liquid, specifically water (see abstract). Regarding claim 23, the body further comprises ribs 22. Regarding claim 24, the body further comprises through hole 23. Regarding claim 25, the body is loosely supported in the receptacle (see col. 2, lines 44-46).

Claims 38 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Prescott.

The Prescott reference discloses a method of manufacturing a body which is capable of being in contact with a cosmetic product, the method comprising providing a molded body having a binder and particles (see col. 7, lines 5-17) which has a cavity (see concave portion of the implant of Figure 2), and abrading the body to expose some particles (see col. 9, lines 1-6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Peled. The Gueret reference discloses a method as discussed supra, but remains silent as to the type of polyether employed. However, Peled discloses the use of organic polyether when polyether is used as a binder (see col. 2, lines 53-55). It would have been obvious to select the use of organic polyether for the binder of the Gueret dispenser in view of Peled because Peled teaches that organic polyether is preferable for use as a binder.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Console in view of Thacker.

Console discloses a dispenser as discussed supra, and further including kaolin as part of the binder (see col. 3, lines 37-40), but remains silent as to the type of kaolin employed. However, Thacker discloses the use of mineral kaolin clay for its absorbent properties (see col. 3, lines 4-7). It would have been obvious to select the use of mineral kaolin clay in the Console dispenser in view of Thacker because Thacker teaches that mineral kaolin clay is preferable for its absorbent properties.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Peled as applied to claim 2 supra, and further in view of Chattha.

The Gueret reference discloses a dispenser as discussed supra, but remains silent as to whether the polyether is thermoplastic or thermohardening. However, Chattha teaches the interchangeability of thermoplastic and thermohardening polyethers (see col. 3, lines 1-2). It would have been obvious to employ either thermoplastic or thermohardening polyether in the Gueret device wherein so doing

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amounts to selection of one functionally equivalent polyether out of the known polyethers in the art and wherein any of these known polyethers would work equally well in the modified Gueret dispenser.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walters in view of Brahm.

Walters discloses a dispenser as discussed supra, but remains silent as to the type of polyacrylate employed. However, Brahm discloses the use of liquid polyacrylate (see col. 1, lines 9-11). It would have been obvious to select the use of liquid polyacrylate in the Walters dispenser in view of Brahm wherein so doing amounts to selection of one functionally equivalent type of polyacrylate out of the known types of polyacrylate in the art and wherein any of these known types of polyacrylate would work equally well in the Walters dispenser.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walters in view of Anello.

Walters discloses a dispenser as discussed supra, but remains silent as to the type of polyacrylate employed. However, Anello discloses the use of polyacrylate oil (see col. 12, lines 3-4). It would have been obvious to select the use of polyacrylate oil in the Walters dispenser in view of Anello wherein so doing amounts to selection of one functionally equivalent type of polyacrylate out of the known types of polyacrylate in the art and wherein any of these known types of polyacrylate would work equally well in the Walters dispenser.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret.

The Gueret reference discloses a dispenser as discussed supra, but remains silent as to the size of the ferrite particles. However, it would have been obvious to use ferrite particle having size dimension in the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Console in view of Leech.

Console discloses a dispenser as discussed supra, but remains silent as to the type of ferrite employed. However, Leech discloses the use of mineral ferrite (see col. 4, lines 34-39). It would have been obvious to select the use of mineral ferrite in the Console dispenser in view of Leech wherein so doing amounts to selection of one functionally equivalent type of ferrite out of the known types of ferrite in the art and wherein any of these known types of ferrite would work equally well in the Console dispenser.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Console.

The Console reference discloses a dispenser as discussed supra, but remains silent as to whether preservatives are in the water in tank 14. However, the function of body 21 is to add preservatives to the water as it travels from tank 14 to 11, and therefore it would have been obvious to employ preservative-free water in tank 14 (if not already) as such preservatives would be unnecessary given the function of body 21.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prescott in view of McAuslan. The Prescott reference discloses a method as discussed supra, but remains silent as to the type of hydrogel employed. However, McAuslan discloses the use of polymer hydrogels for implantable devices (see abstract line 1). It would have been obvious to select the use of polymer hydrogel in the Prescott method in view of McAuslan because McAuslan teaches that polymer hydrogel is preferable for use in implants.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prescott in view of Will.

The Prescott reference discloses a method as discussed supra, but does not disclose the step of inserting the body into a receptacle for packaging and dispensing a cosmetic product. However, Will discloses a prosthesis package (see Figures) which is also capable of packaging and dispensing a cosmetic product by virtue of the cavity within the receptacle. It would have been obvious to add the method step of inserting the body into a receptacle which is capable of packaging and dispensing a cosmetic product to the Prescott method in view of Will for convenient packaging and dispensing of the prosthesis disclosed by Prescott.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The McDaniel reference discloses a pump-type dispenser with a

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body comprising a binder and particles loosely disposed within the receptacle containing the liquid to be dispensed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

Peter T. deVore